

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YAGEO AMERICA CORP., a Delaware
corporation,

Plaintiff,

v.

FAN-CHU TSENG, an individual, and
FONG-LAN TSENG, an individual, and
their marital community,

Defendants.

No. C06-0227RSL

**SECOND STIPULATED PROTECTIVE
ORDER REGARDING TREATMENT
BY THE PARTIES OF CONFIDENTIAL
DOCUMENTS**

I. STIPULATIONS

This action is one based upon allegations of disclosure of trade secrets and sensitive commercial information. In order to litigate this action, the parties will need to exchange documents and other information during discovery regarding the alleged trade secrets and sensitive commercial information. This information is, by nature, highly confidential and proprietary to each party and deserving of protection regarding use and dissemination. Pursuant to Fed. R.

1 Civ. P. 26(c)(7), the Court has the authority to issue an order that "a trade secret
2 or other confidential . . . or commercial information not be revealed or be revealed
3 only in a designated way." Accordingly, the parties request that the Court enter
4 as an Order the following Stipulated Protective Order ("Order") which shall govern
5 the use, handling and/or return of documents, depositions, deposition exhibits,
6 interrogatory responses, and other written recorded or graphic material produced
7 during discovery or on a party's own initiative for use in this action, and all copies
8 thereof, and shall govern the use, handling, and/or return of the documents,
9 materials and information.

10 1. Any party may designate the information it produces as
11 "Confidential" if it believes, in its good faith judgment, that the material contains
12 confidential, market sensitive or proprietary information, including without
13 limitation financial information, trade secrets, product development information,
14 personnel and payroll information or other commercially sensitive or personally
15 sensitive information of a non-public nature. The party shall make this
16 designation by placing on every document or other material (including portions of
17 deposition transcripts) containing such information the legend "CONFIDENTIAL"
18 (except that in the case of multipage documents bound together by staple or other
19 permanent binding, the legend need only be stamped on the first page of the
20 document in order for the entire document to be treated as "Confidential") prior to
21 providing such document or other material pursuant to this Order.

22 2. Any party may designate the information it produces as "Attorneys
23 and Consultants Only" if it believes, in good faith judgment, that the material is not
24 generally known to others and has significant competitive value such that
25 unrestricted disclosure to others would create a substantial risk of serious injury,
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1 and which the Designating Party (i) would not normally reveal to third parties
2 except in confidence or has undertaken with others to maintain in confidence, or
3 (ii) believes in good faith is significantly sensitive and protected by a right to
4 privacy under federal or state law or any other applicable privilege or right related
5 to confidentiality or privacy. The party shall make this designation by placing on
6 every document or other material (including portions of deposition transcripts)
7 containing such information the legend "ATTORNEYS AND CONSULTANTS
8 ONLY" (except that in the case of multipage documents bound together by staple
9 or other permanent binding, the legend need only be stamped on the first page of
10 the document in order for the entire document to be treated as "Attorneys and
11 Consultants Only") prior to providing such document or other material pursuant to
12 this Order.

13 3. When used in this Order, the word "documents" mean all written,
14 recorded or graphic matter whatsoever, however created and whatever the
15 medium on which it was produced or reproduced, including, but not limited to,
16 documents produced by any party, whether pursuant to Fed. R. Civ. P. 33 or 34,
17 subpoena, or by agreement, and may also include deposition transcripts and
18 exhibits, and any portions of any court papers which quote from or summarize any
19 of the foregoing. When used in this Order, the term "other information" means
20 any portion of any answer or response to any written discovery request.

21 4. All "Confidential" and "Attorneys and Consultants Only" documents
22 and all information contained therein, and any other confidential information, shall
23 be used by the parties to whom the documents are disclosed solely for the
24 prosecution and/or defense of this action, and shall not be further disseminated,
25 except as specifically set forth below.

1 5. Except with prior written consent of the party asserting confidential
2 treatment, documents designated as "Confidential" and the information contained
3 therein, and any other confidential information, may be disclosed only to the
4 following persons:

5 (a) counsel for the parties (including attorneys and staff
6 associated with or employed by the legal counsel);

7 (b) any party or other officer or employee of a party to the extent
8 deemed necessary for the prosecution, defense, or settlement of this litigation;

9 (c) court reporters and stenographers employed in connection
10 with this suit;

11 (d) outside consultants and experts employed by counsel of
12 record for the parties; and

13 (e) any witness or deponent who is asked at his or her deposition
14 or at trial to testify about documents or things designated as "Confidential" or the
15 contents thereof.

16 6. Except with prior written consent of the party asserting confidential
17 treatment, documents designated as "Attorneys and Consultants Only" and the
18 information contained therein, and any other confidential information, may be
19 disclosed only to the following persons:

20 (a) counsel for the parties (including attorneys and staff
21 associated with or employed by the legal counsel);

22 (b) court reporters and stenographers employed in connection
23 with this suit;

24 (c) outside consultants and experts employed by counsel of
25 record for the parties; and
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1 (d) any witness or deponent who is asked at his or her deposition
2 or at trial to testify about documents or things designated as "Attorneys and
3 Consultants Only" or the contents thereof.

4 7. Before disclosing "Confidential" documents or information to any
5 person enumerated in paragraphs 5(b), (d) or (e) or 6(c) or (d) above or
6 "Attorneys and Consultants Only" documents or information to any person
7 enumerated in paragraphs 6(c) or (d) above, counsel for the disclosing party must
8 first inform that person that the information or document to be disclosed contains
9 confidential or proprietary information which must be held in confidence and may
10 be used solely for the purpose of preparing for this litigation or settlement and,
11 further, that these restrictions are imposed by a Stipulated Protective Order
12 signed by the parties and their counsel and entered by the Court. Each person
13 granted access to "Confidential" or "Attorneys and Consultants Only" information
14 shall not reveal or disclose the contents of the confidential or proprietary
15 information for any purpose, including, without limitation, any business,
16 professional, or commercial purpose, other than those relating to this litigation.
17 Each such person shall read this Order or be advised by counsel as to its
18 contents, and shall agree to be bound by its terms by signing Exhibit A, attached
19 hereto.

20 8. It is the obligation of the party producing confidential or proprietary
21 documents to identify specific documents as "Confidential" or "Attorneys and
22 Consultants Only." If the party receiving such documents objects to that
23 identification, and counsel for the parties are unable to resolve the objection
24 informally, the receiving party may file a motion with the Court requesting relief.
25 The burden of persuasion in any such challenge proceeding shall be on the party
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1 asserting the designation. Unless and until the Court issues a ruling allowing
2 disclosure, all materials designated "Confidential" or "Attorneys and Consultants
3 Only" shall remain as designated.

4 9. Upon the production of "Confidential" or "Attorneys and Consultants
5 Only" material from one party to another party, and in the normal course of
6 discovery, the receiving party may seek to depose a witness from the producing
7 party regarding these materials. During such a deposition, only counsel for the
8 parties, party representatives, expert witnesses or consultants for the parties (if
9 permitted to attend by the rules of civil procedure and/or agreement of the
10 parties), the witness, and the witness's counsel may be present during any portion
11 of the interrogation concerning the material deemed "Confidential" or "Attorneys
12 and Consultants Only" except that party representatives other than counsel may
13 not attend any portion of the deposition during which "Attorneys and Consultants
14 Only" material is being reviewed or discussed. Likewise, the portions of any
15 deposition transcript dealing with these materials and any exhibits to the transcript
16 should be marked in pertinent part and treated as "Confidential" or "Attorneys and
17 Consultants Only" pursuant to this Order. This paragraph does not grant any
18 special right to take depositions, but rather governs the use of materials
19 designated as "Confidential" and "Attorneys and Consultants Only" in an
20 otherwise authorized deposition. If appropriate, the witness may be asked to
21 review this Order and to sign Exhibit A, attached hereto.

22 10. Deposition transcripts shall be treated as "Attorneys and
23 Consultants Only" for a 21-day period following receipt of the transcript by all
24 parties. Within the 21-day time period, any party may designate portions of the
25 transcript as "Confidential" or "Attorneys and Consultants Only" by page and line
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1 number, by providing written notice to all parties.

2 11. Before disclosing "Confidential" and "Attorneys and Consultants
3 Only" materials (hereinafter "designated materials" or "materials"), the disclosing
4 party shall notify the designating party regarding which materials it intends to
5 disclose. Within ten (10) calendar days of such notice, the designating party must
6 either consent to the disclosure of the selected materials or file a stipulation and
7 proposed order to seal or a motion to seal the selected materials. The
8 designating party's failure to timely file a stipulation and proposed order to seal or
9 a motion to seal shall be treated by the parties as a consent to disclosure of the
10 designated materials. Until such time as the designating party has consented to
11 disclosure or filed a timely stipulation and proposed order to seal or a motion to
12 seal, the disclosing party shall refrain from filing any designated materials. After
13 the designating party has filed a stipulation and proposed order to seal or a
14 motion to seal, the disclosing party may file such documents electronically by
15 lodging them and should reference either a court order allowing such documents
16 to be sealed or a pending motion to seal, in accordance with the Western District
17 of Washington's electronic filing procedures, or shall follow such other
18 instructions as may be provided by the Court.

19 12. At the conclusion of the litigation of this action, or upon settlement or
20 dismissal, documents or other information designated as confidential, and all
21 copies of such documents or other information (other than exhibits of record),
22 shall be returned, within 30 days, to the source from which they were produced or
23 at the direction of the producing party, or destroyed with the party destroying the
24 documents providing a certificate of destruction to the producing party.

25 13. In the event additional parties join this action they shall not have
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1 access to "Confidential" and "Attorneys and Consultants Only" material until each
2 newly joined party by its counsel has executed and filed with the Court its
3 agreement to be fully bound by this Order.

4 14. The inadvertent production of a confidential document without the
5 "Confidential" or "Attorneys and Consultants Only" identifier shall not waive the
6 confidential nature of that document and does not alter the confidential or
7 proprietary nature of any other "Confidential" or "Attorneys and Consultants Only"
8 documents. Upon discovery that a confidential document has been produced
9 without the "Confidential" or "Attorneys and Consultants Only" identifier, the
10 producing party shall promptly notify the other parties, in writing, and shall request
11 that all parties treat the document in accordance with this Order. Such other
12 parties may challenge the confidentiality designation in accordance with
13 Paragraph 8, supra.

14 15. The undersigned parties and counsel shall keep material identified
15 as "Confidential" or "Attorneys and Consultants Only" in a secure and segregated
16 location, shall not disclose those documents, and shall not use or disclose them
17 other than as authorized by this Order. The undersigned parties and counsel
18 understand that this Order continues after the conclusion of this litigation.

19 16. The parties acknowledge that any violation of this Order will result in
20 irreparable injury to the injured producing party not adequately compensable
21 solely by an award of money damages. In the event of any such violation, the
22 party injured by the violation shall be entitled, in addition to any other rights and
23 remedies it may have at law or in equity, to have an injunction issued by the
24 Court, or any court of competent jurisdiction, enjoining the party violating this
25 Order (and/or any third party involved in the violation) from continuing such
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1 violation.

2 17. To expedite the production of information, parties may inadvertently
3 produce documents that are privileged. Inadvertent production of privileged
4 documents shall not be deemed a waiver of any applicable privilege. Upon
5 notification that privileged documents have been produced inadvertently, the
6 parties shall treat the documents as privileged unless and until the Court has
7 sustained a challenge to the assertion of privilege. A motion asserting a
8 challenge to the privileged nature of the inadvertently produced documents must
9 be filed within fourteen (14) days after a party receives notice of a claim of
10 inadvertent production of privileged documents. If no such motion is filed, all
11 parties shall, within fourteen (14) days of receipt of notification of the inadvertent
12 production, return to the producing party, or destroy, all copies of privileged
13 documents in their possession or in the possession of their counsel or any other
14 person under their control. Written confirmation of this return or destruction of
15 documents shall be provided to the party asserting the privilege.

16 18. Entry of this Order is without prejudice to the right of any party to
17 seek a protective order imposing additional restrictions upon discovery of
18 confidential information or documents, including but not limited to an order that
19 production thereof not be made.

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1 DATED this 4th day of August, 2006.

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3 CORR CRONIN MICHELSON
4 BAUMGARDNER & PREECE LLP

RIDDELL WILLIAMS P.S.

5 By s/ Kelly P. Corr
6 Kelly P. Corr, WSBA # 555
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Attorneys for Defendants

By s/ Laurence A. Shapero
Karen F. Jones, WSBA # 14987
Laurence A. Shapero, WSBA # 31301
Rebecca L. Andrews, WSBA #36035
Attorneys for Plaintiff

8 ORRICK, HERRINGTON
9 & SUTCLIFFE LLP

10 BY s/ Thomas J. Gray
11 Gary E. Weiss, (admitted Pro Hac Vice)
12 Thomas J. Gray (admitted Pro Hac Vice)
Attorneys for Defendants

EXHIBIT A

ACKNOWLEDGMENT REGARDING CONFIDENTIAL INFORMATION

The undersigned hereby acknowledges that:

1. I have read and understand the terms of the Stipulated Protective Order ("Order").

2. I hereby agree to be bound by the Order's terms with respect to any documents, material, or information marked "Confidential" or "Attorneys and Consultants Only" that are furnished to me as set forth in the Order.

3. I hereby agree not to disclose to anyone any documents, material or information marked "Confidential" or "Attorneys and Consultants Only" other than as permitted by the Order.

4. I hereby consent to the jurisdiction of the United States District Court for the Western District of Washington with regard to any proceedings to enforce the terms of the Order.

5. I hereby agree that any documents, materials or information marked "Confidential" or "Attorneys and Consultants Only" furnished to me will be used by me only for the purposes of this litigation and for no other purpose and will not be used by me in any business affairs of my employer or of my own or be imparted by me to any other person.

6. I declare under penalty of perjury that the foregoing is true and correct.

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DATED this _____ day of _____, 20____.

Name

Title or Position

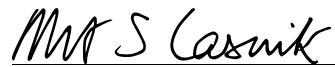
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II. ORDER

The Court hereby orders as stipulated by the parties above.

DATED this 7th day of August, 2006.



Robert S. Lasnik
United States District Judge